

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRYAN McCROY,

Defendant.

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CASE NO. 8:08CR321

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Defendant's pro se motion to reduce his sentence as a result of the Fair Sentencing Act of 2010 (Filing No. 113) and the motion to withdraw filed by Federal Public Defender David R. Stickman (Filing No. 118).

The Defendant pleaded guilty to Count I of the Indictment, which charged him with conspiracy to distribute and possess with intent to distribute 50 grams or more of a mixture or substance containing crack cocaine, resulting in a statutory minimum sentence of 10 years. On March 9, 2009, the Defendant was sentenced to the mandatory minimum sentence of 120 months imprisonment. The Eighth Circuit Court of Appeals has determined "that the Fair Sentencing Act of 2010, moderating mandatory minimum cocaine base sentences, is not retroactive." *United States v. McKoy*, __ F.3d __, No. 11-1749, 2011 WL 6845991, at *1 (Dec. 30, 2011). *But see United States v. Hill*, 417 F. App'x 560 (7th Cir. 2011), *cert. granted*, 2011 WL 3472365 (U.S. Nov. 28, 2011) (No. 11-5721). Therefore, at this time the Defendant is not entitled to a further reduction. Because there are no other nonfrivolous issues that may be addressed with respect to the Defendant's sentence, defense counsel's motion to withdraw will be granted.

IT IS ORDERED:

1. The Defendant's motion to reduce his sentence (Filing No. 113) is denied;
and
2. The motion to withdraw filed by Federal Public Defender David R. Stickman
(Filing No. 118) is granted.

DATED this 20th day of January, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge